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SPECIFIC GROUPS AND INDIVIDUALS

MIGRANT WORKERS

Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2000/48

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Executive summary

The Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodríguez Pizarro, is submitting her second report in accordance with Commission on Human Rights resolution 2000/48. It deals with the information received, the communications sent and the activities carried out by the Special Rapporteur during the period from 6 January to 15 December 2000.

The Special Rapporteur's work relates to the following situations corresponding to her mandate: (a) acts contrary to the full implementation of rules and minimum standards for the protection of the human rights of migrants; (b) cases of multiple discrimination and violence against migrant men and women; (c) obstacles to the full and effective protection of the human rights of migrants; (d) acts against migrant children; (e) trafficking and smuggling of migrants; and (f) return of migrants who are undocumented or in an irregular situation.

During the period under consideration, the Special Rapporteur sent urgent appeals to the Governments of the Argentine Republic, Canada, the United Arab Emirates and Lebanon, drawing their urgent attention to information received on alleged violations of the human rights of migrants. Specifically, the Special Rapporteur drew the attention of the Argentine Republic to the racist and xenophobic attacks suffered by Bolivian labourers living in Escobar, Exaltación de la Cruz, Campana and Zárate. She sent joint urgent appeals to the Government of Canada about the possible deportation of a Pakistani citizen threatened with death in Pakistan and to the Government of the United Arab Emirates about the death sentence imposed on an immigrant woman from Indonesia living in the United Arab Emirates. She also sent a joint urgent appeal to the Government of Lebanon about the situation of a group of migrants of Sudanese origin seeking asylum in Lebanon. She received information about the alleged ill-treatment of the above-mentioned persons in various detention centres.

The Special Rapporteur sent two communications through the normal channels to the Governments of Spain and the Dominican Republic requesting information about the living and working conditions of immigrants in El Ejido (Almería, Spain) and Haitian workers in the sugar cane fields in the Dominican Republic.

The Special Rapporteur includes information in her report on her contribution during the period under review to the preparatory work for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as on her opinion about the relationship between the two issues.

In chapter IV of the report, the Special Rapporteur describes the general context and discusses the following topics which are of special concern to her: (a) situation of irregular migrants; (b) sale of fraudulent documents; (c) situation of migrant women and unaccompanied minors; (d) undocumented children without access to health care and education; (e) broken families; and (f) racism, xenophobia and racial discrimination.

In the chapter on activities, the Special Rapporteur describes the visits which she plans to make in 2001, in accordance with the request made in resolution 2000/48.

The Special Rapporteur concludes by stating that, based on the information made available to her during the past year, she does not believe that violations of the human rights of migrants have decreased. She notes that, with regard to smuggling and trafficking in migrants, the period under review has revealed one of the hardest faces of migration, with reports about large numbers of migrants who have fallen into the hands of smugglers and traffickers to be exploited in sex or degrading work and migrants who have died in the cargo compartments of trucks, in the holds of ships and on board rafts. The Special Rapporteur hopes that the United Nations Convention against Transnational Organized Crime and particularly its two Protocols will put an end to such situations. She also expresses the hope that the present report will draw attention to situations and obstacles to the full and effective protection of the human rights of migrants and possible measures to prevent the abuses which millions of persons throughout the world have to endure because of their status as migrants.

Introduction

1. This report is submitted in accordance with Commission on Human Rights resolution 2000/48 of 25 April 2000. It is the second annual report which the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, has submitted for the Commission's consideration and also the second submitted to the Commission since the Economic and Social Council established the mandate on the "human rights of migrants" by its decision 1999/239, in which it took note of Commission resolution 1999/44.

2. Chapter I contains a general description of the Special Rapporteur's mandate. Chapter II describes the legal framework of the mandate, while chapter III describes methods of work for fulfilling the mandate. Chapter IV provides a general overview of the situation of migration and the various situations which arise in relation to the question in the framework of the mandate, as well as situations which require greater attention by the Special Rapporteur. Chapter V offers detailed information on the main activities which the Special Rapporteur has carried out pursuant to her mandate during the period under consideration, including the emergency situations which called for action by her. Chapter VI contains the concluding observations and the recommendations made by the Special Rapporteur to Governments, civil society and migrants themselves. The report analyses the questions considered in the last report the Special Rapporteur submitted to the Commission and is also an attempt to give a more detailed explanation of the new headings introduced last year. The Special Rapporteur is grateful for the comments and information which she received in response to her first report to the Commission and which she has tried to incorporate or draw attention to in the present report.

3. The Special Rapporteur is also submitting an addendum to this report describing her visit to Canada from 17 to 30 September 2000.

I. MANDATE

4. At its fifty-fifth session, the Commission on Human Rights adopted resolution 1999/44, by which it decided to appoint, for a three-year period, a special rapporteur on the human rights of migrants to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation.

Pursuant to this resolution, on 6 August 1999, the Chairperson of the Commission on Human Rights at its fifty-fifth session, after consultation with the members of the Bureau, appointed Ms. Gabriela Rodríguez Pizarro (Costa Rica) as Special Rapporteur on the human rights of migrants. The experience and recommendations of the Intergovernmental Working Group of Experts on the Human Rights of Migrants have been duly taken into account by the Special Rapporteur in the performance of her functions with a view to the protection and promotion of the human rights of migrants. On 28 April 2000, the Commission adopted resolution 2000/48 entitled "Human rights of migrants", in which it encouraged the Special Rapporteur to continue to carry out the functions provided for in resolution 1999/44.

5. In this section, the Special Rapporteur describes the most salient features of the Commission resolutions which established and continued her mandate. The provisions of the mandate refer to the Special Rapporteur's functions and matters of concern in respect of the situation of migrants throughout the world.

6. In its resolution 1999/44, the Commission stated that the Special Rapporteur should formulate strategies and recommendations for promotion and application and establish criteria for policies to promote the human rights of migrants. The resolution requested the Special Rapporteur, in carrying out her mandate, to take into account bilateral and regional negotiations which aim at addressing, inter alia, the return and reinsertion of migrants who are non-documented or in an irregular situation.

7. In that resolution, the Commission requested the Special Rapporteur, in carrying out her functions, to request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families; to formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur; to promote the effective application of relevant international norms and standards on the issue; and to recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants.

8. The Commission also requested the Special Rapporteur, in carrying out her functions, to take into account a gender perspective when requesting and analysing information, as well as to give special attention to the occurrence of multiple discrimination and violence against migrant women and to contribute to the preparatory work for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

9. In its resolution 54/166, the General Assembly welcomed the decision of the Commission to appoint a special rapporteur on the human rights of migrants and endorsed the tasks and duties mandated to her by the Commission's resolution.

10. On 25 April 2000, the Commission adopted resolution 2000/48, in which it encouraged the Special Rapporteur to continue with her work of overcoming obstacles to the full and effective protection of the human rights of migrants and referred to key questions relating to the mandate. In that resolution, the Commission, recalling General Assembly resolution 404/144 of 13 December 1985, by which it approved the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, and expressing its concern at the manifestations of racism, xenophobia and other forms of discrimination and inhuman and

degrading treatment against migrants in different parts of the world, strongly condemned all forms of racial discrimination and xenophobia related to access to employment, vocational training, housing, schooling, health services and social services, as well as services intended for use by the public, and welcomed the active role played by governmental and non-governmental organizations in combating racism and xenophobia and assisting individual victims of racist acts, including migrant victims.

11. The resolution took note with appreciation of the efforts made by some States to penalize the international trafficking of migrants and to protect the victims of this illegal activity.

12. The resolution also reiterated the need for all States to protect fully the universally recognized human rights of migrants, especially those of women and children, regardless of their legal status, and to treat them humanely, particularly with regard to assistance and protection, applying inter alia the measures provided under the 1963 Vienna Convention on Consular Relations regarding the right to receive consular assistance by the country of origin.

13. In that resolution, the Commission requested the Special Rapporteur to include in her work schedule a programme of visits for the two following years, with a view to improving the protection afforded to the human rights of migrants, thus implementing as broadly and as fully as possible all the aspects of her mandate. It also encouraged Governments to give serious consideration to inviting the Special Rapporteur to visit their countries so as to enable her to fulfil her mandate effectively. The Commission requested all Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, to furnish all information requested and to react promptly to her urgent appeals.

14. On a number of occasions, the Commission has adopted resolutions requesting the competent human rights mechanisms and, in particular, the special rapporteurs to pay particular attention to various questions. In its resolution 2000/85, entitled "Rights of the child", the Commission requested States to cooperate fully with and assist the Special Rapporteur on the human rights of migrants. That resolution recommended that, within their mandates, all relevant human rights mechanisms, in particular special rapporteurs, regularly and systematically take a child's rights perspective into account in the implementation of their mandates, especially by paying attention to particular situations in which children are in danger and where their human rights are violated, and that they take into account the work of the Committee on the Rights of the Child.

15. In its resolution 2000/44, entitled "Traffic in women and girls", the Commission encouraged, inter alia, the Special Rapporteur on the human rights of migrants to participate in and contribute to the work of the twenty-sixth session of the Working Group on Contemporary Forms of Slavery in 2001 that will focus on the issue of trafficking.

II. LEGAL FRAMEWORK

16. The Special Rapporteur is authorized by the Commission to examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights of

migrants, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation, in conformity with her mandate contained in Commission resolution 1999/44.

17. The reference legal framework for the Special Rapporteur's mandate is, first and foremost, the Universal Declaration of Human Rights, which forms part of customary international law. Article 2 of the Universal Declaration states that everyone is entitled to all the rights and freedoms set forth in it, without distinction of any kind, such as national or social origin, property, birth or other status. The basic human rights provided for in the Universal Declaration therefore have to be respected in the case of migrants, even those in an irregular situation.

18. Articles 3 and 5 of the Universal Declaration of Human Rights should enable us to take action to bring to justice any persons who commit violations of the human rights of migrants, such as violations of the right to life or subjection to cruel, inhuman or degrading treatment or punishment.

19. Article 6 of the Declaration provides that everyone has the right to recognition everywhere as a person before the law and article 8 states that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law. These articles should make it possible to offer migrants the legal and administrative means of ensuring that they have a stable and legal residence and access to the necessary documents to avoid marginalization.

20. According to article 7 of the Declaration, all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination. Articles 9 to 12 are of particular interest in connection with the topic under consideration.

21. Articles 13 to 16 are also particularly relevant to migration. Article 13 proclaims the principle of freedom of movement. Article 14 guarantees the right to seek asylum and article 15 guarantees the right to a nationality. Article 16 states that the family is the natural and fundamental group unit of society and is entitled to protection. This article is particularly significant in cases of the migration of family units.

22. Articles 22, 23, 25, 26 and 27 ensure that persons affected by globalization, which has given migratory flows new characteristics, are protected in terms of rights wherever they may be and that they are not subjected to economic conditions of deprivation, social exclusion or marginalization.

23. The International Covenant on Civil and Political Rights, which has, at the time of writing of the present report, been ratified by 147 States, provides for a set of basic rights that are relevant to the matter of concern to us. Article 2, paragraph 1, of the Covenant requires States to guarantee the rights recognized in the Covenant to all individuals within their territory and subject to their jurisdiction. This article contains a broad provision against discrimination based on national or social origin, birth and other social status and article 26 provides for specific

protection of the right to non-discrimination. The Covenant specifically recognizes the following basic rights: right to life (art. 6), protection against torture and cruel, inhuman or degrading treatment or punishment (art. 7), protection against slavery (art. 8) and rights to liberty and security of person (art. 9), freedom of movement (art. 12) and freedom of thought, conscience and religion (art. 18).

24. Article 12 of the Covenant contains various provisions relating to the right to freedom of movement. The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party, but, in certain circumstances, an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise, as stated by the Human Rights Committee at its twenty-seventh session in 1986 in its General Comment No. 15. At its sixty-seventh session, the Committee adopted General Comment No. 27 on liberty of movement and freedom to choose residence. The Special Rapporteur shares the Committee's opinion that it is important for States parties to indicate the circumstances in which they treat aliens differently from their nationals in this regard and how they justify this difference in treatment.

25. The International Covenant on Economic, Social and Cultural Rights, which has so far been ratified by 143 States, recognizes the following rights, which relate directly to the topic of our study: the right to work (art. 6), the right to just and favourable conditions of work (art. 7), the right to form and join trade unions and the right to strike (art. 8), the right to an adequate standard of living (art. 11), the right to the highest attainable standard of physical and mental health (art. 12) and the right to education (art. 13).

26. The International Convention on the Elimination of All Forms of Racial Discrimination, which has, at the time of writing of this report, been ratified by 156 States, condemns racial discrimination, i.e. any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. The Convention provides for the possibility of treatment differentiating between citizens and non-citizens, but, as between non-citizens, States may not discriminate against any particular nationality. In addition, the Committee on the Elimination of Racial Discrimination affirms that such a distinction between citizens and non-citizens must not be interpreted as in any way affecting the rights and freedoms recognized in other instruments. The Convention requires States to condemn racial discrimination and pursue policies to eliminate it. It condemns racial segregation and apartheid, as well as propaganda and organizations which are based on ideas of the superiority of one race, the promotion of racial hatred and incitement to racial discrimination. Article 5 of the Convention contains a list of rights which must be enjoyed without distinction as to race, colour or national or ethnic origin.

27. Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has so far been ratified by 123 States, prohibits the expulsion, return or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

28. Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, so far ratified by 166 States, provides that States parties condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. Of particular relevance to the topic of concern to us are article 6, which advocates the suppression of the exploitation of women, and article 9 on equality in respect of nationality laws, which refers, inter alia, to foreign husbands of women citizens of a particular country who cannot acquire the nationality of the spouse. Equality of rights in respect of employment and work, as provided for in article 11, relates to real-life situations that are faced by thousands of migrant women workers.

29. The Convention on the Rights of the Child, which has been ratified by 191 States, offers a framework of protection that is applicable to all children, wherever they may be. The Convention enunciates the civil and political rights of children, as well as their economic, social and cultural rights. Of the articles establishing "general principles" that serve as guidelines for the interpretation of the Convention, attention is drawn to article 2, paragraph 1 of which provides that States parties "shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". The other three "general principles" are the best interests of the child as a primary consideration in all actions concerning children (art. 3), the right to life, survival and development (art. 6) and the right of the child to express his views freely in all matters affecting him, such views being given due weight (art. 12).

30. Attention is also drawn to rights which are of particular relevance, such as the right to have an application to enter a State party for the purpose of family reunification dealt with in a positive, humane and expeditious manner (art. 10) and the right of children temporarily or permanently deprived of their family environment to special protection and assistance provided by the State (art. 20). Account should also be taken of article 29, paragraph 1 (c), in which States parties agree that the education of the child must be directed to the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own.

31. With regard to instruments for the protection of the human rights of migrant men and women workers, the International Labour Organization has adopted a number of instruments designed specifically to protect this group, such as the Convention No. 97 concerning Migration for Employment (Revised 1949), Recommendation No. 86 concerning Migration for Employment (Revised 1949) and Convention No. 143 concerning Migrant Workers (Supplementary Provisions, 1975).

32. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is an attempt to reaffirm and establish basic human rights standards and include them in an instrument which also protects those migrant workers and members of their families who are undocumented or in an irregular situation. The Convention has so far

been ratified by 15 States: Azerbaijan, Bolivia, Bosnia and Herzegovina, Cape Verde, Colombia, Egypt, Ghana, Guinea, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka and Uganda. It has not yet entered into force.

33. The Special Rapporteur notes that the legal instruments which are relevant to the fulfilment of her mandate and thus to the protection and prevention of violations of the human rights of migrants include the United Nations Convention against Transnational Organized Crime and its Additional Protocols (Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Sea and Air). At the time when the present report was completed, 124 States had signed the Convention, 81 States had acceded to the Protocol against Trafficking in Persons and 78 States had acceded to the Protocol against the Smuggling of Migrants. The Special Rapporteur notes that the definitions of terms in the two Protocols are particularly relevant to the focus of the mandate in this regard. Under the Protocols, "trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments for benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, while "smuggling of migrants" means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or a permanent resident.

34. The Special Rapporteur also wishes to refer to the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, adopted by the General Assembly in its resolution 40/144 of 13 December 1985. Its 10 articles embody basic principles for the protection of the human rights of human beings, regardless, inter alia, of their national origin.

III. METHODS OF WORK

35. Since her appointment, the Special Rapporteur has established various types of communication with Governments, with governmental and non-governmental organizations and with migrants themselves. She carried out her first mission in this capacity and, in this report, presents a programme of visits, as requested by the Commission on Human Rights in its resolution 2000/48.

A. Type of communications received by the Special Rapporteur

36. The Special Rapporteur receives a large number of communications containing information on alleged violations of human rights, which, in these particular cases, affect individuals who are not nationals of the country in which they live. Non-governmental organizations are the main source of these communications, but they also come from migrants directly, from intergovernmental organizations, from other United Nations human rights mechanisms and even, in some cases, from Governments. In individual and group cases, the Special Rapporteur is open to transmitting joint appeals with other special Commission mechanisms, as has already been done on other occasions. The present report describes in detail the urgent appeals which the Special Rapporteur has transmitted during the period under review.

37. The communications received from Governments contain information in reply to the urgent appeals and other letters sent by the Special Rapporteur and referred to in a separate part of this report. In this connection, the Special Rapporteur wishes to draw the attention of Governments to paragraph 9 of Commission resolution 2000/48.

B. Type of communications sent by the Special Rapporteur

38. The Special Rapporteur maintains various types of communications with Governments on the basis of the resolutions establishing her mandate and determining the type of cooperation to be expected from Governments and her office. In particular, she has established three main types of communications involving requests for information, for cooperation and for urgent action with a view to preventing or, as necessary, investigating violations of human rights affecting migrants.

C. Visits

39. In its resolution 2000/48, the Commission requested the Special Rapporteur to include in her work schedule a programme of visits for the next two years with a view to improving the protection afforded to the human rights of migrants, thus implementing as broadly and fully as possible all aspects of her mandate.

40. The Special Rapporteur believes that visits to a country are a good way of familiarizing herself with the situation and being able to report to the Commission, taking into account all aspects relating to the main focus of her work. She is convinced that visiting a country does not necessarily mean accusing the Government of that country of having committed human rights violations. Visits are an excellent way of analysing and understanding a situation in the light of every possible circumstance.

D. Cooperation with other United Nations mechanisms

41. Because of the specific characteristics of her mandate, the Special Rapporteur is cooperating actively in the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which will be held in South Africa in 2001. In other resolutions, the Commission requested her to cooperate with other Commission mandates, especially on questions relating to the rights of the child and the traffic in women and girls.

IV. GENERAL CONTEXT AND SITUATIONS REQUIRING THE SPECIAL RAPPORTEUR'S ATTENTION

A. Status of the question

42. It must be borne in mind that migratory flows are not a by-product of the century that has just ended. However, the latest statistics on migratory flows in all parts of the world do show that migration increased in the past few decades and has become a matter of growing concern to Governments, civil society and international and intergovernmental organizations.

43. It has been recognized that migratory flows have an impact on social and political relations, not only within, but also between, countries of destination and transit. It should not be forgotten that migration is the result of a combination of factors.

44. The causes of migration may be divided into five key groups, which show that this is not a problem with a single cause. Social and economic exclusion, the pull exerted by the more developed countries, the need of these countries to rely on migration, intense armed conflicts and natural disasters are now shaping up as the basic causes of migration.

45. Migration is a result of the combination of the effects of economic factors, armed conflicts, economic contraction caused by structural adjustment and natural disasters, which always affect the most underprivileged and hence the most vulnerable populations sectors. In the light of this assessment, it should therefore be pointed out that migration is not always a voluntary process. Recent large-scale migratory flows that have taken place, often in precarious and fraudulent conditions, have created situations that make for violations of the human rights of migrants. Account must be taken of this situation, which is often overlooked or misrepresented. In order to understand this trend, it must be borne in mind that the economic factors giving rise to migration are rooted in the social exclusion of large numbers of nationals who have to emigrate in order to find decent jobs because they have no decent employment opportunities in their countries of origin.

46. Structural adjustment, neo-liberalism, economic conditions which benefit only a small number of nationals and social and economic inequality lead to migration as a means of seeking better opportunities. It cannot, however, be said that economic factors are the only cause of migration to find work. Such factors combine with social factors, armed conflicts and environmental factors which create inequality in access to education and social justice. All these factors come into play in a decision to leave.

47. As a result of the lack of specific information for potential migrants in countries of origin about migration rules in countries of destination, together with unemployment and problems with access to health care and education, the citizens of poor countries see emigration as the only solution. In the majority of cases, however, the decision to emigrate is not based on proper guidance and information and this is when the risk of undocumented migration, so-called irregular migration and the traffic in persons begins.

48. The Special Rapporteur wishes to draw particular attention to the positive characteristics of migration, which are often forgotten. It must, however, not be forgotten that migrants are people and that, as such, they have abilities, strengths and potential that need to be enhanced and developed on the basis of respect for their cultural identity, their religious beliefs and all the ways in which they express themselves as human beings and persons wishing to live in dignity. Migration is essential for many countries and the question of the rights of migrants and the situations which affect them can therefore not be regarded as a marginal issue.

49. Immigration is necessary and beneficial for countries that want it. It is thus only fair that migrants themselves should also benefit from this trade-off. Migrants contribute to the economic growth not only of the country which receives them, but also to that of their country of origin through the money they send to the family members they have left behind.

B. Matters requiring the Special Rapporteur's attention

1. Irregular migration

50. Most workers leave their countries of origin alone and this is a factor leading to family disruption. Heads of household emigrate in order to make dignified lives for themselves and send money to their families. When this situation is combined with the fact that it is impossible for such migrants to leave their country in a regular manner, they run the risk of falling into the hands of organized crime networks which sell travel documentation fraudulently. This is the beginning of a vicious circle.

51. From the point of view of the human rights of migrants, two concepts are particularly important: trafficking in persons and smuggling of migrants, i.e. clandestine border crossing. Cross-border smuggling, for which migrants pay large amounts of money or mortgage their property and that of their families in their countries of origin, is often the start of trafficking which is based on fraud and can lead to debt. Trafficking itself and the exploitation it involves, including lack of choice of type of work, humiliation, physical and mental ill-treatment, recruitment for the sex industry, death threats, coercion and fraud have extremely serious consequences for the individual, including guilt, low self-esteem, depression and emotional and physical vulnerability which become part of the victim's profile.

52. In many cases, the two concepts are related. A person who falls into the trap in order to cross a border often finds himself without protection on the other side and ends up being easy prey for networks of traffickers and smugglers. According to data from the International Organization for Migration (IOM), some 4 million persons are victims of trafficking throughout the world and it is estimated that at least 500,000 women are brought into the territory of the European Union each year for degrading sex work.

53. Organized crime networks take advantage of the need for migrant workers in countries of destination and of the lack of opportunities in countries of origin and cheat, blackmail and create slavery-like dependence as a result of the vulnerable situation in which undocumented migrants find themselves. Employers who take advantage of undocumented workers and do not pay their employment and social security taxes are protected by their nationality. Since national laws penalize migrants, but not the traffickers, they create a favourable climate for exploitation and fraud, even where Governments do not intend such a thing to happen. The need for migrants and the fact that it is difficult for them to work regularly make them easy prey for these smuggling and trafficking networks.

54. It must also not be forgotten that exploitation is closely linked with the topic of concern to us. The exploitation of migrants by unscrupulous employers and contractors who pay lower wages than what they would pay a foreigner in a regular situation or a national only adds to the advantages they gain if they also do not pay their social security and taxes on the earnings from the labour of these persons. Such situations force these workers to put up with excessively long working hours and unacceptable security and hygiene conditions that gravely endanger their health. They enable unscrupulous employers and contractors to threaten migrants with the possibility that they will report their irregular status in the host country, even when such status has been caused by red tape in the country itself.

55. Vulnerability therefore has to be regarded as a characteristic of migration. It should be seen not as a weakness, but as the fact that, because of the special circumstances in which migration is now taking place, migrants are exposed to smuggling and trafficking and may fall into the hands of organized gangs which take advantage of their need to find work in order to survive, and all of this is directly related to the lack of documents which could regularize their situation. This lack of documentation makes them extremely vulnerable to getting caught up in trafficking networks and clandestine activities involving, for example, degrading sex work and slavery-like domestic jobs.

56. In many cases, clandestinity is thus the situation in which migrants find themselves as a result of poor information, lack of documentation, blackmail or fraud. When they become clandestine, many of these persons are forced to conceal their cultural identity and other basic indications of identity for fear of being reported or discovered. In this connection, we cannot forget that, in many cases, these persons left their homes with illusions which were destroyed when they arrived in the host countries and which often make them deny the true situation in their communications with the families they have left behind. This situation is physically and mentally very serious for the individual, who is forced to deny his own identity.

57. An analysis of the question of migration thus also has to deal with the category of undocumented migrants. As soon as this category becomes applicable, it becomes synonymous with lack of protection. Many migrants now referred to in discriminatory terms as being "illegal" used to be called refugees, displaced persons, returnees and reintegrated persons and are now a fact of life on all continents.

58. Citizenship is the key to questions and issues relating to the concept of migration. It must be borne in mind that non-citizenship is handed down by migrants in many countries to their children. The lack of access to identity documents is common for children and adults who do not have documents or whose documents have expired. This characteristic is linked to the above-mentioned element of vulnerability. The lack of documentation is the cause of vulnerability to contractors and subcontractors of undocumented labour who take advantage of the need for migrants, who are hired for unfair wages, hide their accent or identity in order not to be discovered and are constantly threatened with being reported to the migration authorities. In this vicious circle, discrimination against migrants and unfairness to them only become worse.

2. Sale of fraudulent documentation

59. The Special Rapporteur draws attention to the following groups of persons who are of particular concern to her because they have no protection. Special attention must be given to persons and groups of persons in irregular situations who are undocumented and who are the victims of trafficking agents who have sold them travel documents. Another matter of concern to the Special Rapporteur is the monitoring of the rights of other groups of migrants who are in detention or living clandestinely and who are subjected to discrimination and the denial of their rights and thus lacking in any legal, social and political protection in the places where they live.

60. In the Special Rapporteur's opinion, all these persons are covered by the definition of migrant, which should take account of whether a decision to emigrate is voluntary or not. As the Special Rapporteur showed in her first report, whether or not displacement is voluntary, to the

extent that reference is being made to the perceived reasons for migration, is a point that will have to be taken into account as a matter of priority in subsequent discussions for the purpose of formulating a definition of the concept of migrant that better reflects the reality of this complex problem.

3. Situation of migrant women and unaccompanied minors

61. Serious consideration must be given to the situation of migrant women and, in particular, women heads of household who leave their environment behind in order to help raise and educate their children. Many of these women have to leave their own children behind in order to take care of the children of other persons and thus be able to give their own an adequate education and some prospect of a decent life. Their feelings of being uprooted go together with feelings of loneliness. The high hopes that organized crime agents can create for desperate mothers and the vulnerability of these migrant women make them easy prey for the agents and expose them to high-risk situations in the context of irregular migration. In many cases, this combination involves detention, bondage, falling into the hands of smugglers and subjection to degrading and slave labour.

62. With regard to the question of unaccompanied minors, it must be pointed out that many families in countries of origin are forced to send their children abroad to study or work owing to the lack of opportunities in those countries and the many opportunities offered to heads of household by agencies. In the majority of cases, these minors are abandoned by agents in transit countries or the host country after the families have paid large amount of money. These minors run the risk of being subjected to serious abuses and even sexual, degrading and slave labour. In other cases, they are detained, expelled or deported even though they are victims. These situations of detention which last for months and even years in many cases often involve violations of their fundamental rights.

4. Undocumented minors without access to health care and education

63. The cycle of clandestinity and irregularity in which large numbers of migrants become trapped, in some cases as a result of the lack of information and, in others, because of bureaucratic red tape, is starting to be handed down to the children. In many cases, access to health care is denied to the children of migrants and this is contrary to the Convention on the Rights of the Child. Disregarding biased interpretations of the Convention to avoid obligations, it cannot be forgotten that children in this situation are very likely to fall into the hands of traffickers and to be forced into sexual slavery.

64. As part of this analysis, the Special Rapporteur draws particular attention to the cases of children who are born in the host State and whose parents are in an irregular situation. If the host State forces the parents to leave the country, the child is being denied the right to develop as a national of the State where he was born, even though the State recognizes this right. The Special Rapporteur wishes to draw the attention of Governments to the particular situation of migrant women domestic workers. Reports are increasingly being made of sexual abuse by the employers of these persons as a result of the lack of protection in host countries and inequality between employer and worker. There is an alarming number of cases of births in which it is claimed that the father is the employer, although the births are not recognized. These children,

whose numbers are increasing, are unprotected. This situation must be analysed in order to find a solution which will provide protection for a group of children born as a result of the abuse of domestic workers by their employers.

5. Broken families

65. Because of the circle formed by the need for decent jobs, the lack of opportunities in countries of origin and the dream of an economically buoyant, politically stable and highly developed country, women and men emigrate to find better jobs and opportunities, in what is originally an act of genuine necessity and high hopes. This is the environment for the separation of the family unit, the unit which creates and brings about emotional and social development. The separation of parents and children, with unaccompanied minors being sent away, is tangible evidence of migration. When strong families are separated for long periods of time, they break up. This kind of break-up has a negative impact on the elderly, adults, young people and children. A change of role takes place in individual behaviour and leads to loneliness, depression and, in many cases, cases of violence, including sexual violence. All this is the result of the lack of regularization of migration with a view to family reunification that is formally and fully governed by laws protecting the family as the group unit of society.

6. Racism, xenophobia and racial discrimination

66. Unfortunately, violence against migrants in the form of xenophobic and racist feelings is more and more in the news in Europe, Asia, North America, Latin America and the Caribbean. In this connection, the terms used to refer to certain groups play a very important role.

67. The term "illegal migrant", which is widely used, gives rise in many societies to a negative reaction that may lead to violent incidents ending in serious violations of human rights. A detailed analysis of the causes of these situations of irregularity and of their consequences must therefore be carried out and consistent public information campaigns must be waged to prevent racist and xenophobic reactions against migrants.

68. Acts of discrimination at work are usually committed against the migrant population and abuses based on sex or race go unpunished in the majority of cases because of the undocumented status of many migrants. This situation does not place them in a position of equality with the nationals of the host State to exercise their right to complain of the abuses to which they are subjected.

69. The Special Rapporteur also wishes to draw the attention of States to acts of xenophobia and racist violence against the migrant population. The communications media sometimes offer a distorted view of the effects of migration. In some cases, migrants are blamed for shortcomings in the health, education and social security systems of host countries. These and other views have had the result that, in many regions, there have been violent reactions against the migrant population. These acts, which we have seen in various parts of the world, are beginning to repeat themselves and intensify the rejection of foreigners, as well as strong xenophobic, racist and discriminatory reactions.

70. It is important to be aware of the fact that orderly migration based on respect for the dignity of men and women is necessary and beneficial for migrants, for host countries and for countries of origin. Racist and xenophobic acts can therefore not be fomented either by action or by omission. Such acts involve violations of the human rights of a large number of persons and make the human rights of national communities in their own countries examples of poor civic education for young people and children.

V. ACTIVITIES OF THE SPECIAL RAPPORTEUR

71. Since assuming her functions, the Special Rapporteur has carried out various activities. During the period covered by the present report, the Special Rapporteur transmitted the following urgent appeals to the Governments of the States listed below. The cases in which the Governments responded to the urgent appeals are also discussed.

72. The present report does not claim to offer an exhaustive account of all human rights violations whose victims are migrants in various parts of the world. It does, however, offer a complete analysis of how the Special Rapporteur is fulfilling the mandate entrusted to her by the Commission on Human Rights, with the means and possibilities made available to her.

A. Urgent appeals

73. In the case of urgent appeals, the Special Rapporteur relies on the resolutions which established the mandate and require this type of appeal and on the international normative framework which is also referred to in those resolutions. The principal substantive legal framework, as indicated in the Commission's most recent resolution, i.e. resolution 2000/48, includes the International Covenants on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Rights of the Child. The Special Rapporteur finds that the United Nations Convention against Transnational Organized Crime and its two additional protocols, ratified in Palermo (Italy) from 12 to 15 December 2000, are relevant to the fulfilment of her mandate and the protection of migrants. The Special Rapporteur considers that these instruments and others offer a general framework for protection that can guide her in the task of effectively promoting and protecting the fundamental human rights of all migrants.

74. During the period under review, the Special Rapporteur sent the following urgent appeals to the Governments of the countries referred to below.

Argentina

75. The Special Rapporteur sent an urgent appeal to the Government of Argentina on 23 August 2000, referring to the information received on alleged threats and attacks, in the months preceding the communication, against Bolivian labourers in the area near the town of Escobar. According to the information received, a large number of Bolivian immigrants living in Escobar, Exaltación de la Cruz, Campana and Zárate suffered various attacks on account,

according to the source, of their national origin and migrant status. It reported that physical attacks and torture accompanied the assaults on Bolivian families living in that area and that, in some cases, the victims were given electric shocks and burned with irons.

76. In a letter dated 11 September 2000, the Government of Argentina provided the Special Rapporteur with information on the progress of the investigation into the attacks suffered by Bolivian labourers in the country. The Government stated that the first step was the arrest of eight people, from whom it seized a large number of weapons they had in their possession. The Government is continuing the investigation to try to determine the motive for the crimes.

Canada

77. On 9 August 2000, the Special Rapporteur sent an urgent appeal jointly with Ms. Asma Jahangir, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and Ms. Radhika Coomaraswamy, the Special Rapporteur on violence against women, its causes and consequences, referring to the case of Anam Iqra, a Pakistani woman who sought asylum in Canada. According to the information received, Anam Iqra's father killed her mother for not complying with the family's practices. After her mother's death, Anam Iqra was tortured by her brother and was threatened with death by her family on various occasions. She sought asylum far from Pakistan, in the United States and later in Canada. The Special Rapporteur was told that Anam Iqra ran the risk of being deported to Pakistan after her application for refugee status was denied. The Special Rapporteur appealed to the Canadian Government to prevent Anam Iqra's deportation.

78. In a letter dated 28 November 2000, the Canadian Government sent the Special Rapporteur information on Anam Iqra's case. The Government states that the woman was declared eligible for refugee status on 25 July 2000. On 7 September 2000, she was granted a temporary work permit pending the decision in her case. According to the Government, the time period for a status determination hearing in the Quebec region, where Anam Iqra lives, is about eight months. The Government reports that the Immigration and Refugee Commission in charge of the case is subject to strict confidentiality regulations which prevent it from releasing information about cases except with the express authorization of the person concerned or his legal representative. In its communication, the Government states that the concerns expressed by the Special Rapporteurs in their urgent appeal would be taken into account as part of Anam Iqra's file during the hearing and that, since Anam Iqra arrived in Canada from the United States, her deportation, if such were decided, would be back to that country, not to Pakistan.

United Arab Emirates

79. On 9 March 2000, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on violence against women and the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the case of Kartini bint Karim, an Indonesian immigrant in the United Arab Emirates. According to the information received, the woman was employed as a domestic servant in Fujairah and became pregnant in 1999, as a result of which her employers accused her of adultery. She was brought before the local authorities and gave birth during her detention. Appearing without legal representation, she was tried by the city

court of Syriah Fujairah, which sentenced her to death by stoning. According to the source, the court had sentenced a man who killed his wife with a rock to four years' imprisonment and 70 lashes. According to the information received, Kartini bint Karim did not receive information or consular assistance. The Special Rapporteur requested the Government of the United Arab Emirates to commute Kartini bint Karim's sentence and release her.

80. In a letter dated 14 April 2000, the Government of the United Arab Emirates reported to the Special Rapporteur on the case. The letter specified that the Indonesian authorities in the country had been informed and that Kartini bint Karim had received legal assistance. The Special Rapporteur received information from the source that Kartini bint Karim had been released and had returned to Indonesia.

United States of America

81. On 14 June 2000, the Special Rapporteur sent a communication to the United States Government expressing her concern about the situation of Mexican migrants in the Arizona border area. The Special Rapporteur had received information about the organization of groups of armed ranchers for the capture of so-called illegal migrants. According to the information received, several migrants had been killed and large numbers of others felt that their lives were in danger. In the above-mentioned communication, the Special Rapporteur asked the United States Government to adopt measures to protect the right to life of Mexican migrants in the area and to extend an invitation to her to visit the border with Mexico. As stated below in the section on "Visits", the United States Government agreed to invite the Special Rapporteur.

Lebanese Republic

82. On 17 November 2000, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture about the cases of Trabun Ibrahim Laku, Gilbert Kwagy, Adam Abu Bakr Adam and Saah Muhammad Abdallah, Sudanese citizens seeking asylum in Lebanon. According to the information received, these persons are being detained incommunicado in Furn al-Shibak, a general security detention centre in Beirut. It is reported that about 200 migrants and asylum-seekers from Sudan and Iraq are being detained in the same conditions in the country on charges of illegal entry. The Special Rapporteur was informed that the persons in question had been subjected to torture and degrading treatment, allegedly to make them withdraw their applications for asylum in Lebanon.

B. Communications through normal channels

Spain

83. The Special Rapporteur sent a communication to the Spanish Government on 14 November 2000 about the situation of immigrants who work and live in the Andalusian town of El Ejido (Almería). According to the information received, the migrants' living, health and work conditions in the area are worrying. The migrants are working in especially difficult conditions, which are even worse in the case of so-called "undocumented migrants". The source informed the Special Rapporteur that the total number of migrants in that category was

around 70 per cent of all foreign workers. According to the information received, the working day in the greenhouses is 10 hours long. In some cases, the workers sleep in the greenhouses or outbuildings and work as watchmen, so that their working day is 24 hours long. Inside the greenhouses, the workers have to endure temperatures as high as 45° C, relative humidity of about 90 per cent and pesticide-filled air. The widespread use of pesticides in the plastic-covered greenhouses means that the workers breathe all day long without any security measures to lessen their adverse effects on health. Although the source has not received studies on the long-term effects of such exposure to toxic substances, it reports that effects such as irritations and respiratory and eye problems have already occurred. The Special Rapporteur also referred to the incidents which took place in El Ejido from 5 to 7 February 2000. She requested the Spanish Government to send her information on the measures taken to improve the working, living and health conditions of documented and undocumented migrants. In the case of undocumented migrants, the Special Rapporteur informed the Government that the lack of protection against exploitation seemed to be absolute, since their situation prevented them from filing any kind of complaint.

84. In a letter dated 24 November 2000, the Spanish Government sent the Special Rapporteur information on the situation of migrants in El Ejido. The Government made the reports of the government delegation in Andalusia and of the Ministries of the Interior, Labour and Social Affairs and Foreign Affairs available to the Special Rapporteur. With regard to the February 2000 incidents, the government reports that it has installed 42 housing units, each suitable for eight people. Ten others equipped with kitchens have also been installed for use in the areas where the housing units are located. The units can accommodate 336 persons. With the cooperation of the Spanish Red Cross, the government subdelegation in Almería has drawn up a list of about 200 complaints filed by immigrants and Spaniards who suffered loss or injury. The Spanish Red Cross conducted a loss assessment survey and evaluated the damage. The Government reports that 13,858,864 pesetas ($79,400) had been spent as at 10 March 2000. As for the regularization of the status of immigrants, the Government reports that information and research centres were opened on 21 March 2000. Regarding security, it says that it has maintained a police and Guardia Civil presence. In order to make progress on action to find solutions to the problems involved in work by immigrants, the Government states that offers have been made to hire 100 people in Huelva, in two groups of 50 each. The Government informed the Special Rapporteur that it would transmit information on the progress made in the investigations as soon as possible.

Dominican Republic

85. The Special Rapporteur sent the Government of the Dominican Republic a communication on 14 November 2000 about the situation of migrant workers from Haiti working in the sugar cane fields in the Dominican Republic. According to the information received, approximately 500,000 live and work in the Dominican Republic in particularly difficult living and working conditions. It is reported that the majority work and live in the sugar cane fields, where essential services to ensure minimum standards of hygiene and habitability are apparently non-existent. The source reports that workers are exposed to excessively long working days for which they do not receive fair wages. The Special Rapporteur also received

information that only 5 per cent of immigrants from Haiti in the Dominican Republic have identity documents. The Special Rapporteur therefore drew the Government's attention to the vulnerability of the workers and their families.

86. The lack of documentation places immigrants in a very vulnerable position which prevents them from reporting the abuses to which they claim to be subjected. The Special Rapporteur requested the Government of the Dominican Republic to send her information on the measures taken to improve the situation of the immigrants from Haiti working in the Dominican Republic.

87. In a letter dated 13 December, the Government of the Dominican Republic sent the Special Rapporteur information on the Protocol between the Dominican Republic and the Republic of Haiti on Repatriation Mechanisms and the text of the declaration between the two countries on conditions for the employment of their nationals. In its communication, the Government of the Dominican Republic reports that the President of the Republic, Mr. Hipólito Mejía, is aware of the complexity of the issue and is committed to doing everything possible to help find a solution and that the Head of State has expressed his Government's intention to continue an open and respectful dialogue with the Haitian authorities, mainly through the Dominican-Haitian Mixed Bilateral Commission, in order to reach agreements and formulate joint projects to improve the standard of living of both peoples. An objective assessment of the number of foreign citizens in the country has been called for. The Government reports that it has contacted experts from the International Organization for Migration (IOM) for the purpose of carrying out the survey, which will provide accurate data on the numbers of Haitian citizens in the Dominican Republic. It may be noted that, among other measures, the Supreme Court of Justice has decided that illegal workers employed in the sugar cane industry and claiming the benefits to which they are entitled are exempted from having to pay a security for costs, which is usually required at any stage in the proceedings from foreign citizens bringing an action in the Dominican courts. This measure has been taken to ensure conditions of equality in the workplace.

C. Visits

88. The Special Rapporteur received invitations from the Canadian and Mexican Governments to visit their countries. She visited Canada from 17 to 30 September 2000. The report on the visit is contained in an addendum to the present document (E/CN.4/2001/83/Add.1)

89. In a letter dated 15 May 2000, the Special Rapporteur thanked the Mexican Government for its kind invitation, dated 28 April 2000, to carry out a mission to analyse the question of migrants who cross the border with the United States of America. The Special Rapporteur informed the Mexican Government that she was particularly concerned about the situation of migrants in the border area between Sonora (Mexico) and Arizona (United States), to which the invitation refers, and that she was closely following developments there. She said that her concern extended to other parts of the territory and that, in order to analyse the problem from all points of view referred to in her mandate, she would be interested in extending her future visit to other areas, as well as to the southern border. She accepted the invitation and intends to visit the country in early 2001.

90. The Special Rapporteur sent a communication to the Government of the United States on 14 June 2000 in which she inquired about the possibility of an invitation to visit the country to get a complete picture of migration across the Mexican border and thus submit a balanced report to the Commission on Human Rights.

91. In a letter dated 8 December 2000, the Government of the United States sent an invitation to the Special Rapporteur to visit the country in conjunction with her Mexican visit.

92. The Special Rapporteur intends to visit the Asian region and Africa in 2001. In this connection, she sent a communication to the Philippine Government on 18 December 2000 in which she expressed her interest in visiting the country and requested an invitation to do so.

D. Participation in the preparatory work for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance

93. The Special Rapporteur took part as an expert in the Regional Seminars of Experts held in Addis Ababa from 4 to 6 October 2000 and in Santiago de Chile from 25 to 27 October 2000. She submitted a number of recommendations and observations on the situation faced by migrants as a result of xenophobia, racism and racial discrimination in host and transit countries.

94. During the meetings in which she took part, the Special Rapporteur placed particular emphasis on the unfortunate relationship between the two questions and, for example, recommended that States should establish training programmes in schools in cooperation with civil society, non-governmental organizations and academic institutions to prevent racial discrimination, xenophobia and intolerance towards migrants. States must recognize the problem in order to find an effective solution. Most migrant groups are subjected to structural discrimination that is reflected in various kinds of exclusion and fewer employment opportunities. The Special Rapporteur therefore calls on countries to ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, which is a basic instrument embodying specific elements relating to the protection of nationals abroad, vulnerability to abuse, slavery-like work and trafficking in persons.

95. At all the meetings she attended, the Special Rapporteur urged States to prevent the law from discriminating against any person. In particular and in the area of concern to her, she appealed to States to eliminate the obstacles that prevent migrants and all persons from enjoying the right to equality under the law, by ensuring that protection and defence mechanisms operate in the same way for everyone without discrimination as to race, origin, sex or religion.

96. The Special Rapporteur also referred to the specific problems of migrant women, drawing the attention of the Governments present at the preparatory meetings for the World Conference to the need to implement policies to guarantee the integration of migrant women in all sectors and close off possibilities for discrimination and abuse.

97. The Special Rapporteur is interested in continuing to take part in the preparatory meetings for the World Conference to be held in 2001 and in the World Conference itself. She has received invitations to take part in national preparatory meetings. She thus plans to attend the meeting to be organized in Segovia (Spain) on 16 and 17 February 2001.

E. Consultations

98. The Special Rapporteur attended the annual meeting of Special Rapporteurs from 5 to 9 June 2000, at which she had an opportunity to hold meetings with other Special Rapporteurs, Special Representatives and members of the working groups with mandates established by the Commission on Human Rights. Cooperation involved sharing information on that mandate, consultations and urgent appeals.

99. The Special Rapporteur visited Geneva from 9 to 13 December 2000. During that time, she attended consultations with the Secretariat and other Special Rapporteurs of the Commission on Human Rights. She also held meetings with representatives of Governments and non-governmental organizations.

F. International Migrants Day

100. In a press release, the Special Rapporteur welcomed the General Assembly's proclamation of 18 December as International Migrants Day (resolution 55/93, adopted without a vote on 4 December 2000).

G. Other activities

101. The Special Rapporteur took part in many international meetings at which careful consideration was given to the challenges migrants face as a result of globalization. For example, she attended the Annual Meeting of the Ibero-American Federation of Ombudsmen held in Mexico City from 19 to 21 November 2000.

VI. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

102. The Special Rapporteur has had an opportunity to raise the question of migration during the period covered by the present report on the basis of the recommendations contained in the resolutions which establish and define her mandate. In the meetings in which she has taken part, she had thus endeavoured to speak and hold discussions with government authorities, non-governmental organizations and migrants themselves. Accordingly, she would like to make the following observations and recommendations.

A. Concluding observations

103. The Special Rapporteur hopes that this report will help draw attention to the importance of the question and to the positive side of migration and encourage host countries, transit countries and countries of origin to adopt measures, jointly and independently, aimed at preventing situations in which migrants are deprived of protection and are therefore subjected to abuse, which are common nowadays in all parts of the world and which lead to serious violations

of migrants' human rights. The Special Rapporteur welcomes the fact that many Governments have adopted a more open approach in the past year and particularly thanks all of those which have extended invitations to her to visit their countries. She nevertheless draws the attention of Governments to the situations of racism, xenophobia and discrimination which are occurring with greater intensity every day and which focus on the migrant population.

104. The Special Rapporteur commends and congratulates the Governments which have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

105. The Special Rapporteur notes with regret that many serious incidents that occurred during the period under review resulted in the death of many migrants inside trucks, in the holds of ships, on board rafts or in detention centres when they were trying to escape situations that did not allow them to live dignified lives. She thus welcomes the efforts that led to the signature in Palermo (Italy) of the United Nations Convention against Transnational Organized Crime and its Additional Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against the Smuggling of Migrants by Land, Sea and Air.

106. The Special Rapporteur takes this opportunity to express her gratitude for the support given to her by the Office of the United Nations High Commissioner for Human Rights in the fulfilment of her mandate. She also feels encouraged by the work being done by the Office of the High Commissioner to establish a data base in support of the thematic mechanisms of the Commission on Human Rights, of which the office of the Special Rapporteur on the human rights of migrants has become part. She is nevertheless concerned that the precarious financial situation of United Nations human rights programmes may undermine stable and uninterrupted support for her mandate.

107. The Special Rapporteur thanks Governments, NGOs and universities for the support they have given her during the period under review and especially for invitations to take part in meetings and symposia, which she considers to be of crucial importance for the fulfilment of her mandate.

B. Recommendations

108. On the basis of the resolutions which established and defined the mandate on the human rights of migrants, the Special Rapporteur submits the following recommendations to the three levels referred to in the resolutions: Governments, civil society and migrants themselves.

Effective protection of the human rights of migrants

109. It is strongly recommended that States which have not have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should do so. All States should bring the provisions of their national legislation on the protection of the human rights of migrants into line with international standards. The provisions of the Convention will guarantee protection against potential and real violations of the human rights of migrants, which many Governments are trying to combat on their own.

110. All States are urged to adopt legislation to prevent trafficking in persons. Information campaigns should be carried out and training provided by States, non-governmental organizations, social organizations and universities about the vulnerability of and danger faced by undocumented migrants. Such campaigns should be carried out by States of origin and by transit and host States. The Special Rapporteur requests that legislation should be drafted to penalize the sale of documentation by organized crime and that the impunity of agents of organized crime and the criminalization of victims should be ended.

Measures for the prevention of violations of human rights

111. The Member States of the United Nations should agree to study situations which give rise to irregular emigration in States of origin, calling for a far-reaching inter-regional, regional and bilateral dialogue (among countries of origin, transit and destination) on the prevention of irregular migration, whose most vulnerable victims are women and unaccompanied children. In this connection, joint responsibility must be brought into play. States must make consular protection fully effective.

112. The Special Rapporteur urges States of origin to establish mechanisms to guarantee the inclusion of all citizens as a means of encouraging them not to leave, as well as to formulate programmes and projects at the local and regional levels to strengthen community and national holding capacity.

113. Information campaigns, in particular, must be carried out to prevent irregular migration by supplying information on all the risks involved in sending away unaccompanied minors or women in response to modelling and other job offers which may put them in the hands of agents for the traffic in persons. Information on the possibility of deportation and detention must be clear-cut. It has to be easy for consular authorities to distribute.

114. The Special Rapporteur recommends that States should develop documentation programmes for its citizens, adults and children alike, not only for national purposes but, above all, for when they are outside their countries as migrants, since the possession of documents gives them access to fundamental rights. Such documents include birth certificates, identity papers and records, needed to work, study and have access to health facilities in the countries to which they are migrating.

Racism, xenophobia and racial discrimination

115. States are strongly urged, particularly this year, when they will take part in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance, to continue to promote information campaigns on the risks run by societies where there have been outbreaks of xenophobia and racism towards the migrant population. The media play a key role in action to combat violations of human rights which occur as a result of xenophobic acts and which have consequences not only for those affected, but also for children and young people as models for societies that discriminate.

116. States are strongly urged to provide their border officials with training in the international human rights conventions which prohibit racism, xenophobia and discrimination. States must,

in all circumstances, and in order to combat organized crime, refrain from claiming that all nationals of particular countries or regions have the same patterns of behaviour.

Undocumented women and children

117. Governments are urged to promote and strengthen regional intergovernmental entities composed of civil society and academic institutions to study, draw attention to and agree on the topic of migration, including the human rights of migrants from the gender perspective, with particular emphasis on the situation of migrant women and children. The action of forums and intersectoral round tables (Governments, NGOs, churches, universities and migrant organizations) should be stepped up in order to debate, recommend and find solutions to the migration problem and, in particular, the full and effective protection of the human rights of migrants.

118. States must guarantee access to health services for migrants, especially migrant children. The Special Rapporteur encourages States which have adopted legislative measures to offer such access to study the effectiveness of the measures adopted and find ways to make them more effective. She commends States which are implementing the right to health for migrants who are undocumented or in an irregular situation.

Migrants in detention

119. All Governments are urged to increase human rights training for immigration officials, the police and bodies that prevent violations of human rights. Officials dealing with migrants who are in detention or who have been subjected to trafficking or degrading work because they have no documentation must receive special training relating to the situation of these persons. Codes of conduct must be drafted so that professional attention may be given to this problem.

Return of migrants to their country of origin

120. The Special Rapporteur encourages States to promote public policies responsibly to inform its nationals about the risk involved in undocumented immigration. She also urges countries of origin to collaborate with host countries to provide their nationals with valid travel documents for a dignified return.

121. The question of the return to their country of origin of migrants who do not have documents is provided for in the Special Rapporteur's mandate. It is very important to formulate policies and accompaniment programmes for dignified returns within humanly acceptable time limits because any continued detention, uncertainty or clandestinity has physical and psychological consequences which are prejudicial to the fundamental rights of migrants.

122. The Special Rapporteur urges States to work together with organs of civil society on the human rights situation in detention centres. Links between States and NGOs must be strengthened with a view to assistance for migrants in detention centres. Such assistance must apply not only to physical health, but also to the mental health of detainees and their links with their country of origin, family and consulate.

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